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Of Counsel:
MICHAEL J. McCUE (Nevada Bar # 6055)
LEWIS AND ROCA LLP
3993 Howard Hughes Parkway, Ste. 600
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Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

DAVID and INGRID BURGESS, husband
and wife, and SHERWIN M. FELLEN, an
individual,

Plaintiffs,

vs.

L. LANCE GILMAN, CASH
ADMINISTRATION SERVICES, LLC,
CASH MANAGEMENT SERVICES, LLC
CASH PROCESSING SERVICES, LLC
and CASH ASSET MANAGEMENT
SERVICES, LLC

Defendants,

AND RELATED COUNTERCLAIMS

CASE NO. CV-N-03-0707-DWH (RAM)

**PLAINTIFFS' MOTION FOR
CONTEMPT**

ORIGINAL

Plaintiffs David and Ingrid Burgess and Sherwin M. Fellen ("the Burgesses") move this Court for an order holding Defendants L. Lance Gilman, Cash Administration Services, LLC, Cash Management Services, LLC and Cash Processing Services, LLC ("the Gilman Parties") in contempt and sanctioning them for their failure to comply with the preliminary injunction order. (See Order # 101 at 11.) The Burgesses also seek an award of the fees and costs that they incurred with their attempts to gain the Gilman Parties' compliance with the preliminary injunction order, including, without limitation,

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LANCE GILMAN
BY [Signature]

134

1 the fees associated with the filing of this motion. The Burgesses' points and authorities in
2 support of this motion are set forth below.

3 **FACTUAL AND PROCEDURAL BACKGROUND**

4 This action involves a dispute over the ownership of the Mustang Ranch trademark
5 ("the Mark") for use in connection with brothel services. Both parties claim ownership of
6 the Mark and the parties each asserted claims against one another for trademark
7 infringement among other claims.

8 On December 21, 2004, the Burgesses filed a motion for a preliminary injunction
9 seeking to enjoin the Gilman Parties from using the Mark. The Gilman Parties filed an
10 opposition on December 27, 2004 and the Burgesses' filed their reply on December 29,
11 2004. The Court held a hearing on December 30, 2004, at which time the Court granted
12 the Burgesses' motion for preliminary injunction. The Order enjoined the Gilman Parties,
13 their officers, agents, servants, employees, and attorneys from using the Mark in
14 connection with brothel services. See Order # 101.

15 On December 30, 2004, the Gilman Parties filed a motion for clarification of the
16 preliminary injunction Order. In response, the Court ruled that the preliminary injunction
17 enjoined the Gilman Parties from using the Mark in connection with a brothel and ordered
18 that any such use of the Mark must stop immediately. (See Order # 107 at 2.) The Court
19 further ordered that use of the Mark was to be discontinued on "signs and the use of the
20 mark to represent the brothel in any way." Id.

21 Despite the preliminary injunction Order, the Gilman Parties continue to use the
22 Mark in current live telephone listings advertised on the internet, as well as in the new
23 print versions of the SBC Nevada white and yellow pages. Although the Gilman Parties
24 disconnected one phone number that was used in connection with their non-existent
25 Mustang Ranch brothel (788.4132), they are now advertising a new phone number in
26 connection with this non-existent brothel (343-1888), as well as using the phone number
27 for the Wild Horse brothel (788.4137) in connection with advertisements for their non-
28 existent Mustang Ranch brothel See Pearson Decl. Exhs. A, B.

1 In an effort to remedy this situation absent Court intervention, the Burgesses'
 2 counsel contacted defense counsel, Elaine Guenaga, in writing on January 20, 2005 to
 3 inform Ms. Guenaga that her clients were in violation of the Court's preliminary injunction
 4 order. See Pearson Decl. Exh. C. Ms. Guenaga's co-counsel, Kirstin Jahn, responded to
 5 Ms. Pearson's January 20 correspondence on January 22, 2005, although Ms. Jahn's
 6 correspondence addressed only some of the continuing uses made by her clients. See Id.
 7 Thus, Ms. Pearson contacted Ms. Jahn again regarding this matter on February 21, 2005, to
 8 which Ms. Jahn responded on February 22, 2005. See Id. Further, Ms. Jahn and Ms.
 9 Pearson discussed this matter (among others) during a meet and confer phone conference
 10 that occurred on February 22, 2005.

11 It appears that the Gilman Parties recently removed their various Mustang Ranch
 12 internet websites, as well as the www.worldpages.com advertisements in response to Ms.
 13 Pearson's February 22, 2005 correspondence. However, the Gilman Parties continue to
 14 advertise a Mustang Ranch brothel on www.superpages.com (see Pearson Decl. Exh. A)
 15 and www.smartpages.com (see Pearson Decl. Exh. B), as well as maintaining a new live
 16 Mustang Ranch phone number, which is listed in the current SBC Nevada white and
 17 yellow pages. See Pearson Decl. Exh. D.

18 **POINTS AND AUTHORITIES**

19 **I. The Gilman Parties Should be Held in Contempt**

20 **a. Standard for Contempt**

21 Federal courts have inherent power to punish for contempt. See Lambert v.
 22 Montana, 545 F.2d 87 (9th Cir. 1976). As the Ninth Circuit has stated, "civil contempt
 23 sanctions . . . are employed for two purposes: to coerce the defendant into compliance with
 24 the court's order, and to compensate the complainant for losses sustained." Whittaker
 25 Corp. v. Execuair Corp., 953 F.2d 510, 517 (9th Cir. 1992) (citing United States v. United
 26 Mine Workers of America, 330 U.S. 258, 303-304, 67 S. Ct. 677, 701-02 (1947)).

27 In addition to a finding of contempt, the Burgesses should also be awarded their
 28

reasonable attorney's fees which were incurred in prosecuting the Gilman Parties' contempt and enforcement of the preliminary injunction order. See Perry v. O'Donnell, 759 F.2d 702, 705 (9th Cir. 1985) (holding that attorney's fees must be expended to bring a violation of an order to the court's attention, and therefore, a "trial court should have the discretion to analyze each contempt case individually and decide whether an award of fees and expenses is appropriate as a remedial measure").

b. The Gilman Parties are in Violation of the Preliminary Injunction

The Gilman Parties continue to use the Mark in violation of the Court's order. As evidenced in the exhibits attached hereto, the Gilman Parties continue to use the Mark in live telephone listings.

1. The Gilman Parties Continue to Use the Mark in Online Telephone Directories

Although the Court enjoined the Gilman Parties from using the Mustang Ranch Mark, they continue to use it in connection with telephone listings that are advertised on the internet. The telephone listings featured on the superpages.com website includes a listing for "Mustang Ranch" that direct callers to the Wild Horse brothel, which is owned by the Gilman Parties. See Pearson Decl. Exh. A. Specifically, the superpages.com website features a listing for a business identified as "Mustang Ranch & Wild Horse Resort and Spa – Wild Horse" that lists a telephone number of 775.788.4137. This telephone number goes to the Wild Horse brothel. Pearson Decl. ¶ 7.

A trademark is deemed to be used in commerce "when it is used or displayed in the sale or advertising of services and the services are rendered in commerce. . . [.]” 15 U.S.C. § 1127. Telephone directories such as those featured on the superpages.com and smartpages.com websites function as advertisements for businesses, and therefore constitute service mark use. The Gilman Parties' defense counsel, Kirstin Jahn, even acknowledged that telephone directory use is service mark use during her oral argument in opposition to the Burgesses' preliminary injunction motion. See Pearson Decl. Exh. E. Thus, as a matter of law, the Gilman Parties are using the Mark in commerce in connection with a brothel. As discussed above, the Court's Order enjoined the Gilman Parties from

1 using the Mark "to represent the brothel in any way." (See Order # 107 at 2.)
 2 Accordingly, the Gilman Parties continue to use the Mark in violation of this Court's
 3 order.

4 **2. The Gilman Parties Continue to Use**
the Mark in Print Telephone Directories

5 Although the Court enjoined the Gilman Parties from using the Mark, they
 6 continue to use it in connection with print telephone directory listings. The November
 7 2004 telephone book was distributed in February, 2005. This phone book contains a new
 8 phone number for the Gilman Parties' Mustang Ranch brothel. See Pearson Decl. Exh. D.
 9 Despite being informed that this new phone number violates the preliminary injunction
 10 against them, the Gilman Parties have not disconnected this phone number, which goes to
 11 an answering machine. See Pearson Decl. ¶ 9.

12 **3. The Gilman Parties Continue to Use the Mark on Signage**

13 In addition to their continued use of the Mark in telephone directories, the Gilman
 14 Parties continue to use the Mark on a sign that is located in close proximity to their open
 15 and operating Wild Horse brothel. Subsequent to the Court's Order of December 30,
 16 2004, the Gilman Parties erected an electric sign that features the wording "Mustang
 17 Ranch" together with the logo used by the previous owners and operators of the Mustang
 18 Ranch brothel. See Pearson Decl. Exh. F. Shortly after erecting the sign, the word
 19 "Mustang" was covered with a section of plywood. The mere act of covering the word
 20 "Mustang" fails to fully comply with the Court's order of December 30, 2004, as the sign
 21 still conveys to consumers that the brothel is or will be named "Mustang Ranch."

22 **II. The Burgesses Should be Awarded Attorney Fees and Costs**

23 The Burgesses filed a motion for a preliminary injunction in order to prevent
 24 monetary loss due to the Gilman Parties' infringing use of the Mark. The Burgesses have
 25 tried for more than a month to obtain the Gilman Parties' compliance with the Court's
 26 preliminary injunction order. The Burgesses' efforts were not successful, except in respect
 27 to the use of certain domain names and internet advertising on one website
 28 (www.worldpages.com). The Burgesses have incurred fees and costs that would not have

1 been necessary had the Gilman Parties fully complied with the Court's order.
2 Additionally, the Burgesses seek any and all remedies that the Court deems appropriate to
3 compel the Gilman Parties to comply with its preliminary injunction order of December
4 30, 2004.

5 **Conclusion**

6 The Court should grant the Plaintiffs' Motion for Contempt.

7
8 Dated this 7th day of March, 2005.

9 LAW OFFICE OF LARA PEARSON, LTD.

10
11 By: 

12 Lara Pearson (Nevada Bar No. 7132)
13 774 Mays Blvd., No.10, PMB 405
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Tel: 775.833.1600
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14 Of counsel:

15 Michael J. McCue (Nevada Bar No. 6055)
16 LEWIS AND ROCA LLP, Suite 600
17 3993 Howard Hughes Parkway
Las Vegas, Nevada 89109
18 Tel: 702.949.8224
Fax: 702.949.6383

19 Attorneys for Plaintiffs
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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of The Law Office of Lara Pearson, Ltd., and on this 7th day of March, 2005 I served by United States mail, first class postage prepaid, a true and accurate copy of **PLAINTIFFS' MOTION FOR CONTEMPT** on the following counsel of record:

Mark H. Gunderson, Esq.
Mark H. Gunderson, Ltd.
5345 Kietzke Lane, Suite 200
Reno, Nevada 89511

Kirstin M. Jahn
Jahn & Associates, LLC
565 California Ave.
Reno, Nevada 89509

On behalf of Defendants L. Lance Gilman, Cash Administration Services, LLC, Cash Management Services, LLC, Cash Processing Services, LLC and Cash Asset Management Services, LLC

Dated this 7th day of March, 2005.



Lara Pearson

1 LARA PEARSON (Nevada Bar # 7132)
2 LAW OFFICE OF LARA PEARSON, LTD.
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6 Las Vegas, Nevada 89109
Phone 702.949.8200
Fax 702.949.8363

7 Attorneys for Plaintiffs

8 **UNITED STATES DISTRICT COURT**

9 **DISTRICT OF NEVADA**

10
11 DAVID and INGRID BURGESS, husband
and wife, and SHERWIN M. FELLEN, an
12 individual,

13 Plaintiffs,

14 vs.

15 L. LANCE GILMAN, CASH
ADMINISTRATION SERVICES, LLC,
16 CASH MANAGEMENT SERVICES,
LLC,
and CASH PROCESSING SERVICES,
17 LLC

18 Defendants,

19 CASH PROCESSING SERVICES, LLC
Counterclaimants,

20 vs.

21 DAVID and INGRID BURGESS, and
SHERWIN M. FELLEN,
22 Counterdefendants.

CASE NO.CV-N-03-0707- DWH-RAM

**DECLARATION OF LARA PEARSON
FILED IN SUPPORT OF
PLAINTIFFS' MOTION FOR
CONTEMPT**

1 I, Lara Pearson, declare under penalty of perjury under the laws of the United
 2 States that the following is true and correct:

3 1. I am employed by the Law Office of Lara Pearson, Ltd., which is located at
 4 760 Mays Blvd., No. 19, Incline Village, Nevada, 8945. I am counsel of record for the
 Plaintiffs in this action. This declaration is based upon my personal knowledge.

5 2. I certify that I have in good faith corresponded and conversed with defense
 6 counsel, Kirstin Jahn, in an effort to resolve this dispute absent court intervention.
 However, my sincere efforts to settle the dispute have been unsuccessful.

7 3. Attached hereto as Exhibit A is a true and accurate copy of the Gilman
 8 Parties' Mustang Ranch internet telephone directory advertisements from
 9 www.superpages.com, which list the Mustang Ranch with an address of 1000 Wild Horse
 10 Drive in Reno, Nevada, 89451 and a phone number of 775.788.4137 (which is
 11 disconnected) or 775.788.4137 (which goes to the Wild Horse brothel).

12 4. Attached hereto as Exhibit B is a true and accurate copy of the Gilman
 13 Parties' Mustang Ranch internet telephone directory advertisements from
 14 www.smartpages.com, which list the Mustang Ranch with an address of 1101 Wild
 15 Horse Drive, Sparks Nevada, 89434, with a phone number of 775.343.1888.

16 5. Attached hereto Exhibit C are a true and accurate copies of the
 17 correspondence that I sent to defense counsel, Elaine Guenaga and Kirstin Jahn, to
 18 inform them that the Gilman Parties were in contempt of the Court's preliminary
 19 injunction order and the responses that I received thereto.

20 6. Attached hereto Exhibit D are a true and accurate copies of the SBC
 21 Nevada white and yellow page listing for the Gilman Parties' Mustang Ranch brothel.
 22 The listing states that the Mustang Ranch is located at 1011 Wild Horse Canyon Drive in
 23 Sparks, Nevada 89434, and lists a phone number of 775.343.1888.

24 7. Upon information and belief, the phone number 775.788.4137 is the phone
 25 number of the Wild Horse brothel, which is owned by one or more of the Gilman Parties.

1 8. Attached hereto as Exhibit E is a true and accurate copy of the portion of
2 the December 30, 2004 preliminary injunction hearing during which defense counsel,
3 Kirstin Jahn, stated that telephone directory advertising constitutes service mark use.

4 9. Upon information and belief, the phone number 775.343.1888 is answered
5 by an answering machine that states, "Hi. You have reached 343.1888. Please leave a
6 message after the tone. Thank you."

7 10. Attached hereto as Exhibit F is a true and accurate copy of a photograph of
8 the Gilman Parties' electric Mustang Ranch sign, which incorporates the logo used by the
9 prior owners of the Mustang Ranch brothel. As the sign is only partially covered up, it
10 still conveys the overall commercial impression of the Mustang Ranch mark.

11 Dated this 7th day of March, 2005.

12 By: 

13 LARA PEARSON
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veri on

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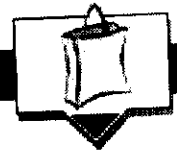
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Home → Yellow Pages → **Mustang ranch (1 - 5 of 5)**

Showing Yellow Pages results for "mustang ranch"

3 NEW SHOPPING SECTIONS

[More results](#)



[Yellow Pages](#) [Merchandise](#) [eBay Results](#) [Web Results](#)

☐ **Show:** In Reno NV only

☐ **Map:** Show Results on Map

Listings

Search Again

1. Type of Search

[Yellow Pages](#)

2. Keyword (browse)

or Business Name

mustang ranch

3. City

reno

4. and State or Nationwide

Nevada

Find It

[Search Tips](#)

Other Yellow Pages searches:

- Map-Based Search
- Search By Distance
- Advanced Search
- Category Search
- Reverse Lookup
- University Search

Related Categories

- Shopping
- Specialty Stores
- Clothing & Accessories
- Clothing & Accessories
- Clothing Accessories Retail (2)
- Nonclassified Establishments (1)

Mustang Ranch
 1360 Skyline Boulevard, Reno, NV 89509
 phone | map | save

Mustang Ranch
 Reno, NV 89501
 phone | map | save

Mustang Ranch
 1000 Wild Horse Canyon Drive, Reno, NV 89501
 (775) 788-4132
 phone | map | save

Mustang Ranch & Wild Horse Resort and Spa - Mustang Ranch
 Reno, NV 89501
 (775) 788-4132
 phone | map | save

Mustang Ranch & Wild Horse Resort and Spa - Wild Horse
 Reno, NV 89501
 (775) 788-4137
 phone | map | save

☐ **Show:** In Reno NV only

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1 - 5 of 5

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First Name:
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[Home](#) [Find a Person](#) [Address Book](#) [Driving Directions](#) [Business Guides](#) [City Guides](#) [Life Events](#)

Find ☐ Business Type ☒ Business Name City (or ZIP or Area Code) State

Advertise on
SMARTpages.com!

Businesses Found: 4
Results for "mustang ranch" in "NV".

- Search Options**
- New Search
 - Near An Address
 - By ZIP Code
 - By Area Code
 - Recent Searches

(Showing 1-4) [Revise Sort Order](#) (

Jump to: A B C D E F G H I J K L M N O P Q R S T U V W X Y Z

ALL LISTINGS

Mustang Ranch The (775) 343-1888
1011 Wild Horse Canyon Dr, Sparks, NV 89434

[Map](#) [Driving Directions](#) [Search Nearby](#) [Save Address](#)

Mustang Ranch Brothel (775) 342-0176
4756 Peri Ranch Rd, Sparks, NV 89434

[Map](#) [Driving Directions](#) [Search Nearby](#) [Save Address](#)

Mustang Ranch (775) 825-2682
Serving Your Area

[Save Address](#)

Mustang Ranch (775) 343-1888
1011 Wild Horse Canyon Dr, Sparks, NV 89434

[Map](#) [Driving Directions](#) [Search Nearby](#) [Save Address](#)

(Showing 1-4)

[Purchase a mailing list from InfoUSA](#)

First Name:
Last Name:
Select

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January 20, 2005

Sent via e-mail to: eguenaga@gundersonlaw.com and by facsimile to: 829.1222

Ms. Elaine Guenaga
Mark H. Gunderson, Ltd.
5345 Kietzke Lane, Ste. 200
Reno, NV 89511

Re: Burgess v. Gilman, Gilman's failure to comply with the preliminary injunction

Dear Elaine:

I hope this correspondence finds you doing well. I am writing to inform you that your client is not in compliance with the preliminary injunction order issued by Judge Hagen on December 30, 2004, which was clarified on January 11, 2005. The Order granting your motion for clarification requires that your clients' "[u]se of the Mustang Ranch mark [is to] stop immediately. Such usage includes *but is not limited* to the use of the mark on signs and the use of the mark to represent the brothel in anyway."

Your client has had ample time to comply with the order, yet it appears that instead of complying with the order, your client is instead increasing its use of the MUSTANG RANCH mark. Specifically, I understand that just yesterday your clients installed a new electric MUSTANG RANCH sign on their property. Moreover, Mr. Gunderson sent correspondence to Storey County Commissioners on Tuesday requesting that the County license your clients for use of the MUSTANG RANCH mark for a museum and souvenir shop (both of which clearly relate to the brothel, contrary to Mr. Gunderson's assertions).

Further, today I found all 3 of your clients' Mustang Ranch/Wild Horse ranch worldpages.com advertisements still in place, as well as 2 Verizon www.superpages.com MUSTANG RANCH/Wild Horse listings. Your client also continues to use all 5 of its MUSTANG RANCH websites, specifically: www.the-mustang-ranch.com; www.nevadamustangranch.com; www.themustangranchbrothel.com; www.worldfamousmustangbrothel.com; and www.worldfamousmustangranchbrothel.com, which now contain news accounts of your clients' October 16, 2003 purchase from the BLM, as well as promotion of your clients' souvenir sales. Specifically, the last 2 lines of all of these websites state, "[t]he Wild Horse Ranch is currently selling special collector edition items for the World Famous Mustang Ranch. Just contact the Wild Horse Ranch today at 775.343.1224 ask for Susan . . ." I also understand that your

Although you filed a Motion for Reconsideration, I do not believe that such filing does stays the preliminary injunction entered against your client. Accordingly, if you do not confirm your client's cessation of ALL of its uses of the MUSTANG RANCH mark by noon on Monday, January 24, 2005, including serving us with a copy of the accounting you are required to file with the Court, we will seek to hold your client in contempt, and we will seek our attorneys' fees for doing so.

Sincerely,



Lara Pearson

cc: Kirstin Jahn
David Burgess
Troy Regas
Michael McCue

JAHN & ASSOCIATES

KIRSTIN M. JAHN

PRACTICING PRIMARILY INTELLECTUAL PROPERTY LAW

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565 California Ave
Reno, NV 89503
Tel: 775-339-2282
Fax: 775-349-7977

COLORADO OFFICE:
1342 Broadway Ave
Suite 314
Boulder, CO 80502
Tel: 303-448-6128
Fax: 303-443-6136

PARTIAL
Tina V. Meade

Admitted to
- New York
- Nevada
- Colorado

January 22, 2005

Via Fax

Lara Pearson
774 Mays Blvd. No. 10
PMB 405
Incline Village, NV 89451

Re: *Burgess et al v. Gilman et al*

Dear Lara:

In response to your letter of January 20, 2005 regarding compliance with the Preliminary Injunction Order please be advised that we did not receive that Order until January 19, 2005. Secondly, we filed our accounting with the Court on January 21, 2005.

As we have stated in the past and in our Motion for Clarification that the web-sites do not advertise the brothel in any way, they simply contain public newspaper clippings. These newspaper clippings are found on various sites all over the web. Although we disagree with your conclusion regarding the sale of souvenirs from the Mustang Ranch our client has agreed to delete that reference. Secondly, the Mustang Ranch Museum is not a brothel, it is a museum and outside of the scope of the Court's Order. Burgesses do not use the Mark for a museum. Nor has this case ever been about any other use except that for a brothel on the part of Defendants.

Please contact me once you have reviewed our Accounting filed with the Court which you will receive under separate cover.

Sincerely,
JAHN & ASSOCIATES, LLC


KIRSTIN M. JAHN
KMJ:gj
Enclosure

cc: Lance Gilman
Elaine Guenaga
Michael McCue



February 21, 2005

Sent via facsimile to: 303.545.5196

Ms. Kirstin M. Jahn, Esq.
JAHN & ASSOCIATES
1942 Broadway, Ste. 214
Boulder, CO 80304

Re: Burgess v. Gilman – contempt of preliminary injunction order

Dear Kirstin:

Please be advised that we consider your clients to be in contempt of the preliminary injunction order. Specifically, your client continues to make the following uses of the Mustang Ranch mark in violation of the order:

- (1) 3 different Verizon superpages.com advertisement located on the internet at:
<http://yellowpages.superpages.com/listings.jsp?SRC=&STYPE=S&PG=L&R=N&C=&N=mustang%20ranch&T=&S=N&search=Find+It>
- (2) 3 different worldpages.com advertisements located on the internet at:
 - a. <http://mustang-ranch.9601273513001.worldpages-ads.com/>
 - b. <http://mustang-ranch.9601273513002.worldpages-ads.com/>
 - c. <http://mustang-ranch.9601273513004.worldpages-ads.com/>
- (3) Current live phone listings:
 - a. 775.343.1888 (advertised in new SBC phone books (white and yellow pages), phone number goes to an answering machine)
 - b. 775.788.4137 (advertised on internet as Mustang Ranch & Wild Horse Resort & Spa, phone number goes to Wild Horse)

ph 775.833.1600 / fax 775.833.1474
email lpearson@secur-ip.com / website www.secur-ip.com
774 Mays Blvd. No. 10. PMB 405. Incline Village; NV 89451

- (4) Mustang Ranch signage – it is my understanding that your clients have covered up the “Mustang” portion of their Mustang Ranch sign (which incorporates the old Mustang Ranch logo), yet it remains apparent what mark the sign is advertising and your clients still light the sign up at night.

Please provide me with written confirmation that all of the aforementioned uses will cease and desist on or before 5:00 pm tomorrow (Wednesday, February 23). Further, please be advised that your clients' continued failure to comply with the preliminary injunction order shall result in our filing of a motion to hold your client in contempt.

Best regards,

Lara Pearson

cc: Elaine Guenaga
Michael McCue
David Burgess
Troy Regas

ph 775.833.1600 / fax 775.833.1474
email lpearson@secur-ip.com / website www.secur-ip.com
774 Mays Blvd. No. 10. PMB 405. Incline Village; NV 89451

303 545 5198;

Feb-22-

10:49;

By: Jahn and Associates;

JAHN & ASSOCIATES

PRACTICING PRIMARILY IN INTELLECTUAL PROPERTY LAW

KIRSTIN M. JAHN

Licensed in:
 • New York
 • Nevada
 • Colorado

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 Tel: 773-389-2800
 Fax: 773-389-2900

COLORADO OFFICE:
 1942 Broadway Ave.
 Suite 844
 Boulder, CO 80502
 Tel: 303-545-5128
 Fax: 303-545-5104

February 22, 2005

Via Fax

Lara Pearson
 Law Offices of Lara Pearson, Ltd.
 774 Mays Blvd.
 PMB 405
 Incline Village, NV 89451

Re: **Burgess et al v. Gilman et al CV-N-03-0707**

Dear Lara:

We are in receipt of your letter of today's date and will respond as soon as we have thoroughly investigated the situation.

Sincerely,
JAHN & ASSOCIATES, LLC



Kirstin M. Jahn

Encl.

cc: Elaine Guenaga

SALO-

344

Albert 5955 Lake Geneva Dr. 849 1896
 Aila David 786 7740
 Aila Louis 827 8204
 Tracy C MD
 2874 N Carson Crsn City 885 8133
 Andrea & Tony 331 4872
 Dennis K 2401 Apollo Wy 356 9243
 Shawn & Erica 747 2671
 Gerald 1801 Sage Ridge Dr 425 4631
 Richard 827 2801
 D 44 Walker Av 851 2817
 Michael S 3941 Clear Creek 322 4306
 4920 Brookside Ct 673 1658
 Dystrophy Association
 333 6789
 Dystrophy Association
 916 921 9518
 Donald 1949 Silverado Creeks Dr 827 2086
 Donald 425 3038
 Tres Arroyos Dr Spanish Sags 329 3333
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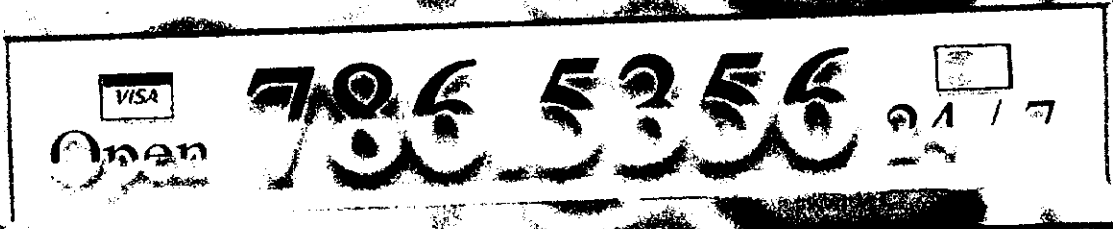
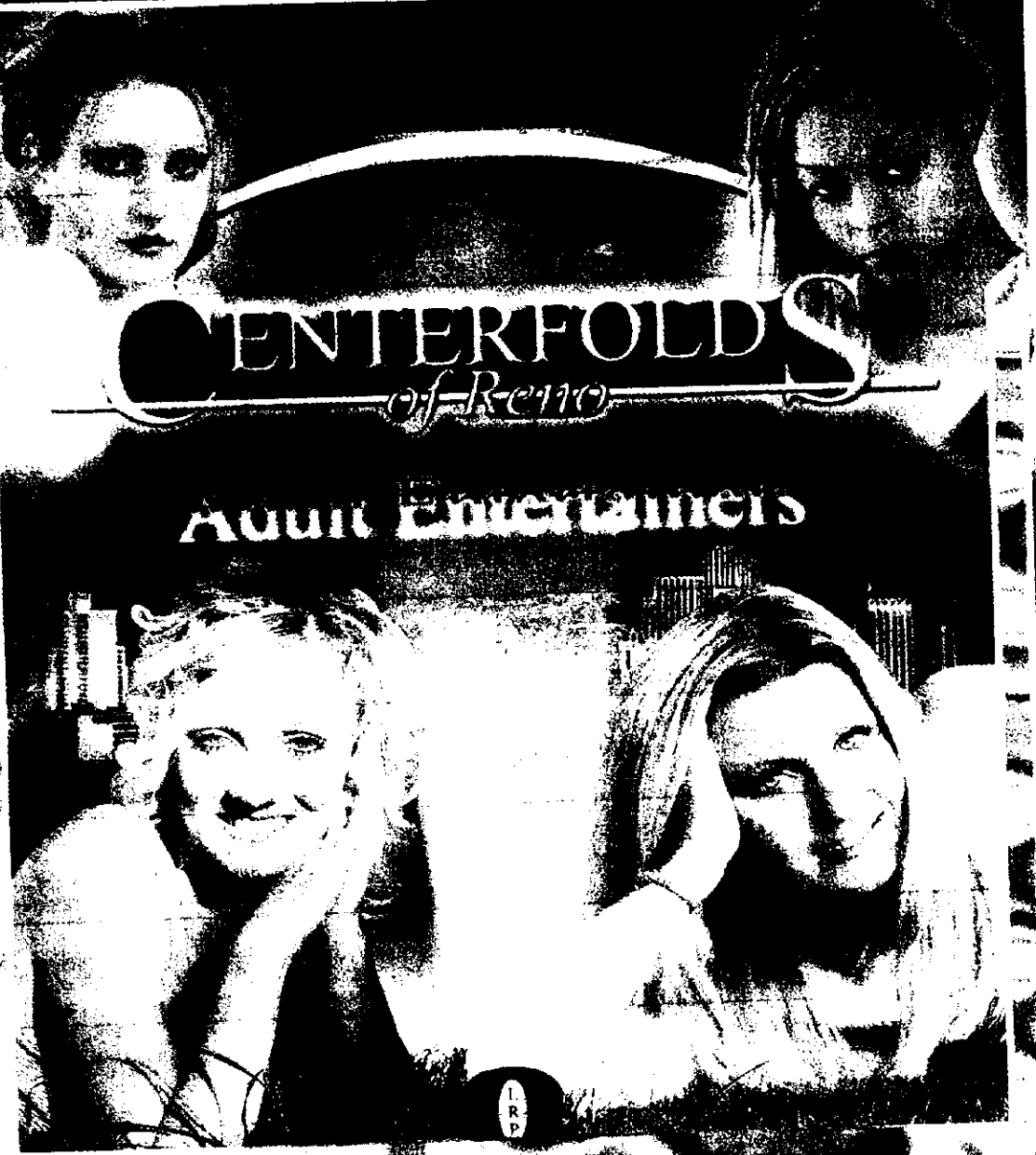
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1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA
3 BEFORE THE HONORABLE DAVID W. HAGEN, SENIOR DISTRICT JUDGE
4 ---o0o---

5 DAVID BURGESS AND INGRID : No. CV-N-03-707-DWH (RAM)
6 BURGESS, et al., :
7 Plaintiffs, : DECEMBER 30, 2004
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9 : Reno, Nevada
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-vs-
L. LANCE GILMAN, et al.,
Defendants.

TRANSCRIPT OF MOTION FOR PRELIMINARY INJUNCTION

14 APPEARANCES:

15 FOR THE PLAINTIFFS:

LARA PEARSON and MICHAEL McCUE
Attorneys at Law
Reno, Nevada

18 FOR THE DEFENDANTS:

KIRSTEN JAHN and ELAINE GUENAGA
Attorneys at Law
Reno, Nevada

21 Reported by:

Margaret E. Griener, CCR #3, RDR
Official Reporter
400 South Virginia Street
Reno, Nevada 89501
(775) 329-9980

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MARGARET E. GRIENER, RDR, CCR NO. 3, OFFICIAL REPORTER

1 rebuttal.

2 THE COURT: All right. You have five minutes
3 left.

4 Who will speak for the defendants?

5 MS. JAHN: This is Kirsten Jahn, your Honor.

6 THE COURT: All right. Please proceed.

7 MS. JAHN: Your Honor, I'm going to focus on the
8 abandonment issue for the same reason I believe that ownership
9 of the mark by the U.S. Government has not necessarily been
10 challenged. There's some arguments there, but they haven't
11 been refused from our opposition brief.

12 And so we'll assume that the government received a
13 valid and enforceable mark from the forfeiture of the AGE
14 assets, and to show then that the government does not own the
15 mark, plaintiffs have to show abandonment. As they correctly
16 stated, they have to show nonuse and intent not to resume use.

17 The nonuse carries a presumption of abandonment if
18 it's not used within three years, but plaintiffs here have
19 alleged that defendants have infringed the Mustang Ranch mark
20 in June of this year through their advertisements in May and
21 that was their first notification of the defendant's use.

22 Defendant I believe also has used in it conjunction
23 with a Yellow Page advertisement.

24 And so this Court then granted them the right to
25 amend their complaint to include a claim of infringement.

